John C. Simons
Senior Counsel

Law, Compliance and Government Relations
Mail Code DE1-1057
201 North Walnut Street
Wilmington, DE 19801

tel 302 282 6670
fax 302 282 8361
john_c_simons@bankone.com

January 30, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
Office of the Secretary
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Via e-mail (regs.comments@federalreserve.gov)

Re: Proposed Rule on Regulation Z; Docket No. R-1167
Proposed Rule on Regulation B; Docket No. R-1168
Proposed Rule on Regulation E; Docket No. R-1169
Proposed Rule on Regulation M; Docket No. R-1170
Proposed Rule on Regulation DD; Docket No. R-1171

Dear Ms. Johnson:

The Federal Reserve Board ("FRB") has published proposed rules to establish more uniform standards for providing required disclosures under Regulations B, E, M, Z and DD (the "Proposed Rules"). Additionally, the FRB has solicited comment regarding the treatment of debt cancellation contracts and debt suspension products under Regulation Z.

Bank One is the nation's sixth-largest bank holding company, with assets of more than $275 billion. Bank One conducts its banking business through Bank One, N.A., Bank One, Delaware, N.A., and other affiliated national banks and operating subsidiaries. Bank One currently serves 53 million credit card customers and over 7 million retail households. Bank One also operates numerous non-bank subsidiaries that engage in credit card and merchant processing, consumer finance, insurance, trust and investment management, brokerage, investment and merchant banking, venture capital, equipment leasing and data processing.

Although Bank One supports the goal of the Proposed Rules, a more uniform standard for providing required disclosures, Bank One believes that the Proposed Rules do not accomplish that goal. Instead, and for the reasons discussed within, Bank One believes that the Proposed Rules would often make required disclosures less understandable to consumers while at the same time imposing significant and unnecessary costs and burdens on the financial institutions making them. Moreover, Bank One is not aware of any evidence of problems with the standards currently employed. Consequently, Bank One respectfully requests that the FRB withdraw the Proposed Rules.

A. The Proposed Clear And Conspicuous Standard is Unworkable

The FRB has proposed a single standard for all written disclosures required by Regulation B, Regulation E, Regulation M, Regulation Z and Regulation DD. Currently, all of these regulations contain a mandate that required disclosures be "clear and conspicuous." However, each of these regulations defines clear and conspicuous in its own way.

The Proposed Rules would set a uniform definition of clear and conspicuous by adopting the standard contained in Regulation P, which requires that disclosures be "reasonably understandable and designed to call attention to the nature and significance of the information in the [disclosures.]" 68 Fed. Reg 68,786 (Dec. 10, 2003); 12 C.F.R. §216.3 (b)(1). The Official Staff Commentary further explains that while clear and conspicuous does not preclude creditors from providing other information along with the required disclosures, the presence of other information, such as contractual terms, with the required disclosures may be a factor in determining whether the clear and conspicuous standard has been met.

Although the clear and conspicuous standard contained in Regulation P may make sense for privacy disclosures, which are usually presented in a stand-alone document limited to that single topic, the standard could lead to confusion when applied to documents containing other disclosures on varying topics which also are of importance to consumers. For instance, a retail deposit contract contains numerous disclosures required by FRB regulations as well as information regarding negotiable instrument law, ownership rights and liabilities, setoff, FDIC coverage, overdraft protection and funds availability. The import of this new standard is essentially to mandate that all disclosures required by federal regulation be segregated into one place in the document and uniformly highlighted lest anyone claim that the positioning of required information with other information diminishes its significance. However, segregating required disclosures (whether or not on related topics) from other disclosures in the document disrupts its flow and will be significantly more confusing to consumers who must then look in multiple places for information governing a single subject.

The Proposed Rules' presumption that 12-point typeface generally satisfies the "designed to call attention" standard while disclosures in less than 8-point type face are likely too small will also have negative ramifications for the consumer. Many consumer documents, such as credit card agreements and deposit account agreements, are lengthy. In addition, many print advertisements or other banking documents have significant space constraints (e.g. newspaper ads, teller receipts, monthly statement). The practical effect of the Proposed Rules will be to encourage 12-point typeface for required disclosures in these documents which will make them even lengthier. Additionally the Official Commentary advises that "[e]xamples of disclosures that are designed to call attention to the nature and significance of this information include disclosures that…in a document that combines disclosures with other information, use distinctive type size, style and graphic devices, such as shading or sideboards, call attention to the disclosures." Practically, the commentary encourages wider margins and more ample spacing and that will also lead to even longer documents, which is intimidating to consumers and expensive for financial institutions and will distract customer attention away from other information not currently required by federal regulation but which is equally as valuable and important, such as minimum monthly payment obligations or balance information used to waive fees.

Another problem with the Proposed Rules is their confusing instruction to avoid "legal and highly technical business terminology" or run the risk of having the disclosures run afoul of the "reasonably understandable" standard. Certain terms of a financial transaction are inherently complex, such as the manner in which periodic interest is calculated on outstanding line of credit balances. In addition, certain regulations require the use of particular complex terms, such as "annual percentage rate" or "finance charge" under Regulation Z. It may be impossible to describe these terms in "short concise sentences," or in "everyday words," or to do so avoiding "legal or highly technical language." The FRB may recall similar issues concerning choices between technical and readily understandable language in connection with provisions of Regulation M rulemaking and litigation regarding the early termination provisions of that regulation. See generally, 61 Fed. Reg. 52,252 (October 7, 1996); Ford Motor Credit Company v. Milhollin, 444 US 555 (1980); and Channell v. Citicorp National Services, Inc., 89 F.3d 379 (7^{th} Cir. 1996).

To address these concerns, Bank One respectfully suggests that if the FRB determines to proceed with this rulemaking that it adopt appendices to the regulations providing either regulatory guidance as to acceptable means of compliance or safe harbor forms such as it has done for Regulation Z. This would also at least partially address the question of whether the use of mandated disclosure language meets the "clear and conspicuous" standard (see the reference to annual percentage rate and finance charge in the preceding paragraph). Past issues related to technical language use could be addressed the way the FRB did for its revisions to Regulation M by allowing references to calculation methods or other acceptable short version statements while advising the consumer in the form that additional information could be requested if desired.

B. Regulatory Burden

Bank One believes that the Proposed Rules' standard potentially represents both a higher and more subjective one than previously applied to all but Regulation P disclosures. At a minimum, Bank One expects courts will be presented with the argument that it represents a higher standard and, since there is no private right of action under Regulation P and hence this standard has never been litigated, the issue will be one of first impression. If the Proposed Rules become final in their current form then Bank One and other creditors will need to review every document containing a disclosure affected by the various regulations to ensure that they meet this new standard. Many will likely need to be re-designed, with potentially significant costs of destruction and reprinting incurred. Moreover, all disclosures, even the redesigned ones, will need to be constantly evaluated with the other materials which the consumer will receive in deference to the Proposed Rule's statement that the inclusion of other material, such as promotional material, along with the document containing the required disclosures may be a factor in determining whether the "clear and conspicuous" standard has been met. This may result in additional mailing or other communication costs to the extent it is determined that inclusion of other material may defeat the "clear and conspicuous" requirement. Bank One believes that the cost of compliance with the Proposed Rules (possible litigation aside) would be substantial, although it cannot yet quantify whether that burden would merely be in the millions, or the tens of millions, of dollars.

C. <u>Debt Cancellation Agreements</u>

The FRB also seeks comment on six specific questions in relation to debt cancellation contracts and debt suspension agreements. Bank One respectfully responds to those questions as follows:

1. The similarities and differences among credit insurance, debt cancellation coverage, and debt suspension coverage in the case of both closed-end and open-end credit?

Credit insurance is similar to debt cancellation contracts ("DCC") and debt suspension agreements ("DSA") in that both are optional products offered to consumers for a fee. Both products are designed to benefit consumers upon the occurrence of specified events.

However, credit insurance differs from both DCCs and DSAs in several significant ways. Credit insurance is a third party contract between the creditor, consumer and an insurance company whereby the insurance company agrees to satisfy the consumer's debt to the creditor upon the occurrence of a specified event. The insurance company offerings and the terms of such offerings are specified by state regulatory agencies. Credit insurance requires the creditor and consumer to rely on the insurance company to satisfy the consumer's obligation to the creditor. Credit insurance presents a risk that the consumer's obligation to the creditor will not be satisfied if the insurance company becomes insolvent. In contrast, DCCs and DSAs are two party contracts between the creditor and consumer. The DCC or DSA amends the underlying contract and details the terms under which the creditor agrees to cancel or temporarily suspend a consumer's obligation to repay debt upon the occurrence of a specified event. In contrast to credit insurance, the creditor itself will either cancel or suspend the consumer's debt under a DCC or DSA. The fact that this product is offered by the creditor allows more flexibility in tailoring the product to consumer demands and results in a broader range of protected life events than is typical for an insurance product. Because the product is offered by the creditor, the pool of consumers eligible for protection under the terms of a DCC or DSA is potentially larger than that eligible for an insurance product which typically is more limited by age, health and other concerns.

2. With what types of closed-end and open-end credit are debt cancellation and debt suspension products sold? Do creditors typically package multiple types of coverage (e.g., disability and divorce), or sell them separately? Do creditors typically sell the products at account opening for open-end credit plans or at or after account opening for closed-end products?

DCCs and DSAs are sold with credit cards and are offered to consumers at the time a consumer opens a credit card account or after an account has already been opened. They are sold with other types of open-end accounts such as unsecured and secured lines of credit at account opening and after opening. DCCs and DSAs are sold at account opening and after opening for closed-end products. It is Bank One's practice to provide consumers with multiple types of coverage for life events, including but not limited to, involuntary unemployment, hospitalization, disability, accidental death, divorce, family leave, birth of a child or economic hardship.

3. What disclosures are made with the sale of DCCs/DSAs or upon conversion from one product to another, whether required by TILA or other laws and how are monthly or periodic fees disclosed to consumers?

The OCC recently issued extensive rules governing DCCs and DSAs at 12 C.F.R. §37. These rules contain a requirement for extensive disclosures at the time of solicitation of a DCC or DSA, written acknowledgement of receipt of these disclosures prior to consummating the purchase of the product, and an affirmative request to purchase. Among the disclosures required are the cost of the product either as a total cost in the case of closed-end credit or unit cost in the case of open-end credit, the voluntary nature of the product, the option of selecting either a monthly bill or single payment arrangement, cancellation policies, and the refund policies governing the single payment method. In addition, the disclosures required by 226.4(d)(3) are provided to consumers. The extensive nature of the OCC regulation provide appropriate guidance when offering a DCC/DSA in a conversion scenario.

4. Is there a need for guidance concerning the applicability of Sections 226.4(b)(7) and (10) and 226.4(d)(1) and (3) to certain types of coverage now available or are the required disclosures adequate for all types of products subject to section 4(d)(1) or 4(d)(3)?

The FRB should revise Section 226.4(b)(10) to clarify that DCCs and DSAs are not insurance by deleting the reference to "whether or not the debt-cancellation coverage is insurance under applicable law." A specific statement that the products are not insurance would be welcome. In addition, as consumers often interact with financial institutions using several different communication mediums, we encourage the FRB to consider clarifying the methods in which a creditor can obtain a consumer's affirmative election under Section 226.44(d)(3)(iii). We believe the board can look to language in 12 C.F.R. §37.7(b), which provides special rules for telephone transactions. Other than the above, we do not believe further guidance for national banks regarding the applicability of sections 226.4(d)(1) and (3) to DCCs and DSAs is necessary in that the disclosures required by 12 C.F.R. §37 are more extensive than the disclosures required by Sections 226.4(d)(3)(i) and (ii) and more than adequately protect consumers. Bank One respectfully suggests, in view of the extensive nature of the OCC regulation, that the FRB allow compliance with 12 C.F.R. §37 to constitute compliance with the requirements of 226.4(d)(3).

5. Currently under 12 C.F.R. 226.9(f), card issuers that intend to change credit insurance providers need only notify consumers that they may opt out of the new coverage, should the FRB interpret or amend §226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements? If so, is there a need to address

conversions other than for credit card accounts?

6. We do not believe there is a need to interpret or amend §226.9(f) to address conversions from credit insurance to DCCs or DSAs since a conversion from credit insurance to a DCC or DSA will trigger the disclosure requirements under 12 C.F.R. §37.

6. OCC regulations for national bank sales of debt cancellation and suspension agreements require a customer's affirmative election of the product. If the FRB interprets or amends Sec. 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements, what additional guidance would card issuers need, if any, to comply with both rules?

If the FRB thinks it is in the best interest of consumers to interpret or amend §226.9(f) to address conversions from credit insurance to DCCs or DSAs, we strongly recommend that the FRB take the position that national banks can comply with §226.9(f) upon a conversion by complying with standards already required by OCC regulations.

Bank One appreciates the opportunity to comment on the Proposed Rules and would be pleased to discuss any of the points raised in this letter in more detail. Should you have any questions, please contact John C. Simons at (302) 282-6670.

Sincerely,

John C. Simons

JCS/fds